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FILED

MAY 27 1968

IN THE

WM B LUCK, CLERK

COURT OF APPEAL

OF THE

FEB 24 1968

STATE OF CALIFORNIA

ninth APPELLATE DISTRICT

Willa G Skelton Attorney Pro Per

VS.

Trustee Richard R. Clements, Herbert A. Wolas
Attorney For Trustee — Enright Elliott and Bet
Attorneys For First Federal Savings and
Loan Association.

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6 UNITED STATES COURT OF APPEALS
7 FOR THE NINTH CIRCUIT

8 WILLA G. SKELTON,)

9 Appellant.)

10 vs.)

NO.22256 and
22256A

11 RICHARD R. CLEMENTS, TRUSTEE -)
12 HERBERT A. WOLAS, ATTORNEY FOR TRUSTEE,)
13 FIRST FEDERAL SAVINGS AND LOAN)
14 ASSOCIATION, SANTA MONICA CALIFORNIA)
15 and COUNSEL FOR SAID FIRST FEDERAL)
16 MICHAEL FITZPATRICK, ATTORNEY.)

17 Appellee and)
18 ASSOCIATED CONSPIRATORS.)

19 BRIEF OF APPEAL

20 APPEAL FROM THE UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 (RE: 3809 FW - BANKRUPTCY)
23
24
25
26

1 WILLA G. SKELTON
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6 UNITED STATES COURT OF APPEALS
7
8 FOR THE NINTH CIRCUIT

9 WILLA G. SKELTON,)
10 Appellant.)

NO. 22256 and 22256A

11 vs.)

I
12 STATEMENT OF FACTS RE:
13 NATURE OF APPEAL

14 RICHARD R. CLEMENTS,)
15 TRUSTEE et al,)
16 Appellee.)

II
17 LEGAL ISSUES OF APPEAL
18 AND ERRORS IN LAW

III
19 INJURY AND LOSS SUFFERED
20 BY APPELLANT

21 I
22 STATEMENT OF FACTS RE: NATURE OF APPEAL

23 Appellant, WILLA G. SKELTON, filed a petition in
24 Voluntary Bankruptcy Proceedings, November 21, 1966. With
25 said petition, appellant filed a list of creditors with
26 debts owing and a FINANCIAL BALANCE SHEET.¹

Appellant's husband, CHARLES W. SKELTON, now deceased
11/14/67, also filed a petition in conjunction with the
above listed petition of November 21, 1966.

Appellant filed the above listed petition for the
purpose of placing appellants property under the juris-
diction of the Bankruptcy Court.

foot-note 1, TRANSCRIPT OF RECORD pgs. 2-7.

6

1 Therafter, this Appellant filed detailed schedules
2 on December 1, 1966. Then on December 27, 1966, a Creditors
3 Meeting was held and the Appellant's and appellant's
4 husband's petitions in Bankruptcy were accepted as filed.

5 REFEREE J.J. RIFKIND appointed RICHARD CLEMENTS,
6 AS TRUSTEE.

7 This Appellant and husband CHARLES W. SKELTON in
8 good faith entrusted to the Bankruptcy Court real property
9 valued at \$270,000.00 according to Court Appraisal. ¹

10 This Appellant and husband CHARLES W. SKELTON owed
11 no personal debts whatsoever. All the debts listed in
12 Bankruptcy were the costs of construction in completing
13 the apartment complex as listed in COURT APPRAISAL. ¹

14 Appellant accepted the pledge of the UNITED STATES
15 GOVERNMENT as set forth in the BANKRUPTCY ACT to protect
16 the property of this petitioner in Bankruptcy Proceedings
17 through the authority and agency of the Federal Courts.

18
19 Today that pledge of immunity and protection
20 of a Bankrupt and the Bankrupt's property has been violated
21 by open seizure of the Appellant's property in spurious
22 replevin actions that are unlawful in the STATE OF
23 CALIFORNIA re: Real Property - and which are not legally
24 allowable under the BANKRUPTCY ACT.

25 Acts of fraud and trickery by the TRUSTEE, this
26 Appellant avers have been the aid and means by which

*footnote See exhibit A.

Respondent FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION of Santa Monica has defied and made mockery of the legal process of law and order under the BANKRUPTCY ACT.

This Appellant has suffered physical violence at the hands of the agents of the Appellees of the present Appeal.

Great and irreparable loss and damage is now suffered by this Appellant because of the seizure of my family's home, of my family's eviction therefrom by armed gangsters even while Appellant and family trusted to the immunity of said possession of their home under the lawful BANKRUPTCY PROCEDURES duly invoked by this Appellant by the filing of PETITION FOR BANKRUPTCY PROCEEDINGS on November 21, 1966.¹

IN BRIEF, the purpose of this appeal is to establish truth and justice where now stands libel, fraud and utter disregard for law and order in the actions and files of Bankruptcy Proceedings in this Appellant's Case #3809 FW. The statement of facts as made herein are set forth in the following or second part of this BRIEF as legal issues with statute and case law as authorities thereon.

* Exhibit B verified copy of Affidavit submitted to HONORABLE FRANCIS E. WHELAN

II

LEGAL ISSUES OF APPEAL, nee ERROR IN LAW
(1)

On January 6, 1967, Respondent FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION of Santa Monica, California,

- a. defied the jurisdiction of the FEDERAL COURTS
OF THE UNITED STATES OF AMERICA;
- b. mocked the laws of CONGRESS of these UNITED STATES
STATES OF AMERICA;
- c. committed planned criminal acts of violence and
seizure, using armed gangsters as acting
agents;¹
- d. evicted with violence and assault and battery
this Appellant and family from legally possessed
home as impounded under BANKRUPTCY PROCEEDINGS
3808 FW and 3809 FW.
- e. Trustee RICHARD R. CLEMENTS turned his head the
other way, disqualified himself as trustee by
acting thereafter, unbonded, and in utter contempt
of the duties imposed by the laws re: duties of
Trustee in Bankruptcy Proceedings under the
Bankruptcy Act of CONGRESS.

* footnotel See verified exhibit C

" 2 See verified exhibit D

Respondent FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
(hereinafter called FIRST FEDERAL) chose to resort to criminal
methods and gangster tactics of seizure of legally impounded
property of Bankruptcy Proceedings 3808 FW and this Appellants
Proceedings under the Bankruptcy Act,

BECAUSE:

a. On January 5, 1967 one day before the seizure
was made, HERBERT WOLAS Attorney was approved
by REFEREE RIFKIND as THE TRUSTEE'S ATTORNEY.

b. HERBERT WOLAS was also FIRST FEDERAL'S
Attorney and through and by him FIRST FEDERAL
was confident a fortune could be seized, the
property would net First Federal after bribes,
and pay offs were made at least \$60,000.00.

c. After January 5, 1967, TRUSTEE RICHARD R.
CLEMENTS BECAME A PUPPET TRUSTEE; and there-
after held himself aloof from actual partici-
pation of any kind in the BANKRUPTCY PROCEEDINGS
AFTER JANUARY 5 and 6, 1967 trustee RICHARD R.
CLEMENTS defaulted in each and every duty
as set forth in 11 USC 75, under Bankruptcy ACT

d. THE TRANSCRIPT OF RECORD by its lack of
Trustee Reports attests to the averments in
part c of this section.

Respondent FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
SELF INCRIMINATED ITSELF, when this Appellant filed an order
TO SHOW CAUSE if said respondent had any right whatsoever to
seize and hold Bankruptcy impounded property and to institute
STATE COURT ACTIONS subsequent to Bankruptcy Proceedings.¹ SAID
Respondent replied to the OSC of this Appellant thus:

1. BECAUSE , said respondent held a TRUSTEE'S
FORECLOSURE SALE DEED,

2, BECAUSE , said respondent was not enjoined from
seizure by the referee at the FIRST MEETING OF
CREDITORS.²

DID the advanced rights as listed above entitle
the above listed Respondent to committ acts of aggression ,
at said respondent's own pleasure upon the property
impounded by this Appellant on the filing a Voluntary Pe-
tition in BANKRUPTCY PROCEEDINGS November 21, 1966.

11 USC 11a . Courts of Bankruptcy are invested with
original jurisdiction in proceedings under the BANKRUPTCY ACT.

The power of Bankruptcy Court as to property under
its Jurisdiction is paramount.

(Petition)

Portland Electric Power Co.
D.C.Or 1943, 976 Supp 877

Property of which a Bankruptcy Court has taken po-
session is-thereby is thereby withdrawn from the jurisdiction
of all other Courts .

HOWARD LANNIN MUSIC CORP D.C.PA 1937
18F Supp 883

The FORECLOSURE sale deed is worthless and not worth the paper it is written on because the first trust deed was recorded after materials and labor was delivered to the listed apartment complex before the FIRST TRUST DEED OF FIRST FEDERAL WAS RECORDED, and FIRST FEDERAL FORECLOSED without bonding same.

C.C.1203.56 - in CALIFORNIA CODES the costs of construction, if holder of first trust deed does not bond a foreclosure in amount of construction liens or file a notice of notice of non-responsibility before foreclosure then that foreclosure is invalid on the property so foreclosed and the owner has a right to file and foreclose a lien to right the record in title.

Any use of said invalid foreclosure SALE DEED in transfer is a fraudulent act. CHARLES W. SKELTON on JANUARY 16, 1967 filed lien 2440 Bk M 2444 pg 714¹

in the amount of \$88,000.00 for his costs and consolidated liens of all construction CREDITORS. SAID LIEN is perfected by foreclosure and is ready for execution as soon as this Appeal is completed or the foreclosure is executed. CASE PRECEDENT is most famous case of such redemption from invalid foreclosure sale BATEMEN and KELLOGG 59CA 464 as explained and clarified in reference text CALIFORNIA REAL PROPERTY LAW OGDEN 1952 page 664.

*footnote See exhibit H for copy of lien.

ANSWER OF THIS APPELLANT ACCORDING TO LAW

Now, this Appellant declares said Respondent FIRST FEDERAL has no defense whatsoever, according to law for the criminal seizure and possession of real property; for the filing and misrepresentation of replevin actions against the Appellant as legitimate processes of law; from the wanton acts injury and damages have accrued directly, upon not only upon this Appellant but upon the family of this Appellant.

THIS APPELLANT has trusted to the due process of law, while like the giant MAFIA, this criminal, this coward to accept said due process hires guns, falsely imprisons, and kills, just as surely as if this respondent had deliberately put a bullet from those branished guns, IN SAID ADVERSARY'S HEAD.

WHAT does it do to a man, to see his family displaced at a point of gun from the only home possessed by them, to see his wife made to accept degradation of imprisonment in a COUNTY JAIL because that wife trusted the authority of our FEDERAL LAWS THE PRTECTION of laws duly invoked under the Bankruptcy Act? Each time one of the harassments took place CHARLES W. SKELTON'S heart faltered and weakened, his trust faltered in decency and law, finally it was too much for his overburdened heart to bear. HYPERTENSION was the direct cause of CHARLES W. SKELTON'S untimely death on November 14, 1967.

And that same Respondent dares to defend such wanton

acts, such criminal acts by smugly stating:

1. I own(a scrap of paper) a TRUSTEE' Sale Deed.

2. Referee Rifkind specifically refused to enjoin me so I now have the right to enter and possess as I see fit.

Now , this Appellant has made made the above statements not verbatim from the response on page, 51 of TRANSCRIPT OF RECORD. The above statements are the underlying meaning in those defenses offered(to the OSC ORDER filed by the Appellant January 31,1967) by the monied and powerful respondent FIRST FEDERAL.

This Appellant in the above ANSWER has first applied the principle of common law-

What is the truth in this controversy?

What is right and Just?

What crime has been committed against Justice and Right?

Now I,as a layman,make ANSWER(to the best of my ability as pro per) to FIRST FEDERAL by submitting to the Honorable APPELLATE JUDGES statutes and case law(I personally have searched out from the COUNTY LAW LIBRARY).

This Appellent, herewith submits said POINTS AND AUTHORITIES in the section of this BRIEF titled ERRORS IN LAW.

To substantiate the preceeding ANSWER made according to common law I submit with this Brief a petition for pertinent REPRTERS TRANSCRIPTS be submitted herewith.

ERRORS IN LAW (continued)

POINTS AND AUTHORITIES (Statute and Case Law)

This Appellant avers that BANKRUPTCY PROCEEDINGS in CASES 3808 FW and 3809 FW being tried herewith in the present Appeal are designated herewith as Referee Orders April 21 and 27 - Appeal 22256 and Order Of May 2- Appeal 22256 A.

This Appellant therefor submits the following ERRORS IN LAW for a reversal of the above listed ORDERS. The ERRORS IN LAW are:

- a. INSUFFICIENCY of evidence to support the ORDERS,
- b. ORDERS are prejudicial and not according to LAW,
- c. ORDERS violate AMENDMENTS V and XIV of the UNITED STATES OF AMERICA, abridging same,,
- d. ORDERS condone violence and lawbreaking,
- e. ORDERS exceed the authority of the BANKRUPTCY COURT, and normal procedures at law,
- f. ORDERS were submitted by unqualified TRUSTEE.
- g. ORDERS are predominated by libel and are products of intrigue and fraud upon the BANKRUPTCY COURT.
- h. No Adjudication of petitioners either by statute or COURT JUDGMENT.
- i. EXCESSIVE DAMAGE SUFFERED BY ORDERS.

POINTS AND AUTHORITIES-continued

On November 21, 1966, this Appellant and husband filed petitions IN BANKRUPTCY PROCEEDINGS UNDER THE BANKRUPTCY ACT. A list of creditors was filed with the petition in advance of schedules. See footnotes 1 and 2.

BANKRUPTCY ORDER 12c provides" If a bankrupt files the list of creditors in advance of schedules, the referee shall call the first meeting of creditors without awaiting the filing of schedules".

REFEREE RIFKIND AWAITED the filing of schedules before calling the first meeting of creditors which was an error in law.

THE PETITIONERS were solvent and committed no act of BANKRUPTCY in the petition filed by them NOVEMBER 21, 1966.

11 USC(19) BY STATUTE THE PETITIONERS WERE SOLVENT

" A person shall be deemed insolvent within the provisions of this ACT whenever the aggregate of his property shall not at a fair valuation be sufficient to pay his debts."

(The debts listed in the petitions were improvement of real property that was the asset listed in said petitions. THESE debts were charges against the property on which was placed materials and labor for such improvement. Labor and materials for said improvement was delivered and labor used FEBRUARY 15, 1965 over 5 months before trust deeds were recorded against the property.)

LABOR AND

DEBTS

1 THE PETITIONERS IN BANKRUPTCY WERE NEVER ADJUDICATED
2 BANKRUPT EITHER BY DECREE or by operation by law.

3 11 USC (1)

4 "ADJUDICATION" shall mean a determination whether by
5 decree or operation of law, that a person is BANKRUPT.

6 11 USC 41 (f)

7 The filing of voluntary petition under CHAPTER I TO VII
8 of this ACT----- shall operate as an adjudication
9 with the same force and effect as a decree of
10 adjudication.

11 The ORIGINAL PETITION filed NOVEMBER 21, 1966, was not
12 filed under CHAPTERS I to VII. THE PETITIONERS were solvent
13 at time of petition, (in BANKRUPTCY) , was filed so no inferred
14 placement in CHAPTERS I to VII could have been made because
15 the face of the petition voided such a placement.

16 No automatic adjudication was made by REFEREE RIFKIND
17 on the ORIGINAL PETITION filed NOVEMBER 21, 1966 therefor.

18 REFEREE again committed an error in law. REFEREE
19 KINNISON in DISCHARGE OF BANKRUPT supplied an untrue statement
20 or a statement contrary to evidence . IN the 4th line of said
21 document it is stated that Willa g. Skelton, present
22 Appellant was adjudged a BANKRUPT on a petition filed by him on
23 the first day of DECEMBER 1966.

24 SAID REFEREE made an error in law which caused
25 great loss and damage to this Appellant. NO PETITION was
26 filed DECEMBER 1, 1966 only a schedule of affairs.

1 ON page 53 of TRANSCRIPT OF RECORD REFEREE KINNISON has
2 stated in a document titled DISCHARGE OF BANKRUPT that,

3 "WILLA G. SKELTON was duly judged a bankrupt on a
4 petition filed by him (her) on the 1st day of DECEMBER 1966."

5 SUCH an adjudication was not by decree so it had to be
6 by exercise of law, which would be an automatic adjudication
7 under 11 USC 41f, which can only be made on the ORIGINAL PETITION.

8 SUCH an automatic adjudication by exercise of law is
9 void because no petition in BANKRUPTCY was filed December 1,
10 1966. SCHEDULES were filed on December 1, 1966 and it is to
11 these schedules the referee refers, because on the forepage of
12 the schedules this Appellant inadvertently failed to cross
13 out the word petition and write in SCHEDULES.

14 SUCH AN INADVERTENT MISTAKE is automatically voided
15 since only the ORIGINAL PETITION was filed according to the
16 BANKRUPTCY ACT in the office of CLERK OF THE DISTRICT COURT
17 of THE UNITED STATES, CENTRAL DIVISION, LOS ANGELES, November 21,
18 1966.

19 PLEASE refer to exhibit G, the undeleted DOCKET
20 of the REFEREE as originally was of record in file 3808 and
21 3809 FW BANKRUPTCY CASES, in the BANKRUPTCY COURT presided by
22 RAY H. KINNISON . -NOTE. The verified document filed on page
23 197 is a false and badly executed false document especially
24 prepared and filed in the TRANSCRIPT OF RECORD to hide the
25 many errors in law made by the administration of unlawful
26 procedures, not allowable in a BANKRUPTCY COURT under the
BANKRUPTCY ACT.

AUTHORITIES RE:
FIRST FEDERAL'S SEIZURE OF PROPERTY

FIRST FEDERAL admitted guilt of seizing BANKRUPTCY PROPERTY by advancing rights in the said seizure by FIRST FEDERAL. See page 51 in TRANSCRIPT OF RECORD and exhibit BOTH are copies of two reponses made to OSC Order.

SINCE FIRST FEDERAL admitted the seizure, the question inlaw to be answered next is,

When property is in costructive possession of the Bankruptcy Court, can a third party file a Replevin¹ACTION in a STATE COURT and use same fraudulently as restitution of premises after foreclosure especially when BANKRUPTCY COURT held custody.

PROPERTY WHEN SEIZED WAS IN CUSTODY OF COURT
(explanation by REFEREE RIFKIND after appointment of TRUSTEE)

COURT: The TRUSTEE is the administrator of the estate.

The Court hears matters and determines matters.

He is charged with the responsibility of

administering the estate. All right, this Court will
stand recessed
Page 66
REPORTER'S TRANSCRIPT of
FIRST MEETING OF CREDITORS
December 27, 1966.

SINCE Courts of Bankruptcy are created and perform by statute of CONGRESS of the UNITED STATES any act against Authority of the Bankruptcy Court is also in defiance to the UNITED STATES OF AMERICA'S Federal laws.

WHAT IS LEGAL PROCESS TO GET RELEASE OF PROPERTY?

If the Bankrupt or agent is in possession of property at the time of filing of a BANKRUPTCY PETITION, (nextpage)

*footnote - SEE replevin Bond pg 33 in TRANSCRIPT OF RECORD USED FRAUDULENTLY TO SEIZE Bankruptcy Property Calif. Codes limit replevin to personal property

1 A SUSEQUENT ATTEMPT TO SEIZE THE PROPERTY BY REPLEVIN
2 is an interference with the custody of the Bankruptcy COURT.

3 ONCE custody or constructive possession of the property
4 has come to the BANKRUPTCY COURT through institution of
5 Bankruptcy Proceedings the only proper method of obtaining
6 release of the property, is PETITION TO RECLAIM.

7 PARAGRAPH 2070
8 page 165 vol 5
9 REMNINGTON ON BANKRUPTCY.

10 Where property is in custody of the Bankruptcy Court
11 no party may seize it by legal process or otherwise without
12 the leave of the Bankruptcy Court.

13 In Re Bergin 55 F Supp 32

14 Miller v Mangus
15 125 22 D 507

16 In re Ripp 242 F 2d 849.

17 In 11 USC 110c the trustee may have the benefits of
18 all defenses available to the Bankrupt as against third persons
19 and the trustee AT THE DATE OF BANKRUPTCY, SHALL BE
20 deemed vested as of such date with all the rights, remedies and
21 powers of a creditor holding, a lien as to all property.

22 11 USC c gives the TRUSTEE creditor's rights against the
23 property of third parties through doctrines of ostensible
24 ownership, or related legislation such as factors acts.

25 annotation pagel27

26 The Bankruptcy Act
by

JAMES ANGELL MACLACHLAN

19

FALSE ARREST
APPELLANT INJURED

The Bankruptcy Act provides immunity under section 11 USC 25 (10) under the BANKRUPTCY ACT and the FIFTH Amendment to the CONSTITUTION OF THE UNITED STATES, TO THE BANKRUPT for any information -testimony given at the First Creditors Meeting. Such testimony is not to be used as evidence in any criminal proceeding in any court whatsoever. ^{W.G.S.}
~~YET FIRST FEDERAL COUNSEL STOOD IN STATE COURT WITH REPORTER'S TRANSCRIPT IN HAND - OF FIRST Creditors Meeting 12-27-66 and USED Same as evidence of Willa G. Skelton's STATEMENTS and Secured her FALSE arrest.~~

This Appellant upon the cooperation and help of TRUSTEE RICHARD R. CLEMENTS, under an old obsolete restraining order not to collect rents under case SWC 9551 now the subject of Appeal #22256 wherein, FIRST FEDERAL would, if the order is not reversed, gain immunity from future law suits for injury sustained in the false arrest, wherefor ORDER of April 21 and 27 violate CONSTITUTION

THIS APPELLANT submits the transcript now held in JUDGE WHELAN'S DISTRICT COURT, Los Angeles, AND INCORPORATES SAME BY REFERENCE (AS IF SAME WERE repeated verbatim) in this BRIEF as evidence. TRANSCRIPT so referred to is, REPORTER'S TRANSCRIPT HEARING SWC 9551 January 25, 26, 1967.

WHEREFOR, this Appellant now prays that the COURT reverse the ORDERS April 21, April 27 and May 2, and award deemed justified by this COURT.

April 13, 1968

Willa G. Skelton
WILLA G. SKELTON

Appellant- PRO PER

County of Los Angeles) ss
State of California)

Affidavit of Mailing

Charles Stephen Skelton am a citizen of the United States and a resident of the county of Los Angeles, California. I am over 18 years of age and am not a party to the foregoing legal case at law.

April 14, 1968 I served the attached document named a BRIEF the respondents herein by depositing a copy thereof enclosed in separate sealed and addressed envelope with postage thereon fully paid, in the UNITED STATES MAIL at Lomita, California, each of which envelopes was addressed respectively as follows:

Enright Elliott and Betz
Suite 703 -606 South Hill
Los Angeles, California

(Attorneys for
FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION
OF SANTA MONICA CALIFORNIA)

ATTORNEY HERBERT A. WOLAS
Suite 510
408 South Spring
Los Angeles California

Attorney for
TRUSTEE RICHARD R. CLEMENTS

I swear and attest the foregoing statements are true and correct.

Subscribed and sworn to on April 15 1968.

Charles Stephen Skelton
Charles Stephen Skelton

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the Federal Rules of Civil Procedure, and that, in my opinion, the foregoing brief is in full compliance with the rules.

Filed April 15, 1968

Thella G. Skelton
Attendant

Attested and affirmed before me

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLA G. SKELTON and
CHARLES W. SKELTON,

Appellants,

vs.

RICHARD R. CLEMENTS,
Trustee,

Appellee.

) No. 22256
) 22256A

) APPELLEE'S OPENING BRIEF

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FOR THE NINTH CIRCUIT

WILLA G. SKELTON and
CHARLES W. SKELTON,

No. 22256
22256A

Appellants,

VS.

APPELLEE'S OPENING BRIEF

RICHARD R. CLEMENTS,
Trustee,

Appellee.

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT:

Now comes RICHARD R. CLEMENTS, Trustee in Bankruptcy for the bankrupt estates of WILLA G. SKELTON and CHARLES W. SKELTON, Appellee herein, and submits his Appellee's Opening Brief.

INTRODUCTION

1. This appeal is but another attempt by Appellants to use the process of this and other Courts to their own end. (It should be noted that CHARLES W. SKELTON has become deceased during the pendency of this Appeal.) It should also be noted that only WILLA G. SKELTON is appealing the Order of May 2, 1967, whereas WILLA G. and CHARLES W. SKELTON are the named appellants with reference

1 to the Orders of April 21st and April 27th, 1967.

2 2. Appellants, in an effort to forestall a foreclosure
3 proceeding on certain real property, filed proceedings under Chapter XI
4 of the Bankruptcy Act in May, 1966. Ultimately, the Chapter XI pro-
5 ceedings were dismissed in September, 1966. Thereafter, Appellants
6 filed a voluntary petition in Bankruptcy on November 21, 1966, (CLK
7 Tr Page 2) and Appellee herein was appointed Trustee in Bankruptcy for
8 both estates.

9 3. Lawsuits were brought by Appellants against
10 FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF SANTA MONICA,
11 TITLE INSURANCE & TRUST COMPANY and others. During the course
12 of the administration of these bankrupt estates, the Trustee examined
13 into said suits and has, with the approval of the Bankruptcy Court, com-
14 promised certain of said suits. The action against FIRST FEDERAL
15 SAVINGS & LOAN ASSOCIATION OF SANTA MONICA was settled by pay-
16 ment to the bankrupt estates of Two thousand two hundred fifty and
17 no/100 (\$2,250.00) Dollars by FIRST FEDERAL SAVINGS & LOAN
18 ASSOCIATION OF SANTA MONICA. Additionally, the suit against
19 TITLE INSURANCE & TRUST COMPANY has been settled and TITLE
20 INSURANCE & TRUST COMPANY has paid to the bankrupt estate the sum
21 of Five thousand (\$5,000.00) Dollars. Additionally, the Trustee in
22 Bankruptcy has invalidated certain security interests on personal pro-
23 perty and said personal property has been sold by the Trustee in the
24 course of administration of this estate.

25 4. Appellants continuing their attempts to frustrate
26 the administration of these bankruptcy estates are now seeking to review

1 (a) The Order of the Referee dated April 21, 1967,
2 (CLK Tr Page 75) approving the compromise of controversy with
3 FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF SANTA MONICA;

4 (b) The Order of April 27, 1967, (CLK Tr Page 85)
5 approving the sale of personal property; and

6 (c) The Order of May 2, 1967, (CLK Tr Page 6 of
7 Supplemental Transcript) denying the application by WILLA G.
8 SKELTON to dismiss her bankruptcy proceedings.

9 5. On July 6, 1967, the District Court Judge WHELAN
10 dismissed the petition for review of the Orders of April 21 and April 27,
11 1967, (CLK Tr Page 154) and on October 5, 1967, the District Court
12 Judge WHELAN confirmed the Order of the Referee made on May 2,
13 1967, (CLK Tr Page 6, Appeal No. 22256A).

14 ARGUMENT
15 RE ORDERS OF APRIL 21 AND APRIL 27, 1967

16 6. These Orders dealt with the administration of the
17 bankruptcy estates. The former dealing with the settlement of a lawsuit
18 and the latter dealing with a sale of personal property. Both assets
19 were subject to administration.

20 7. The Trustee in Bankruptcy was vested with the
21 causes of action pending at the date of the filing of the bankruptcy.
22 Section 70a(5) of the Bankruptcy Act; Section 688.1 of the California
23 Code of Civil Procedure; ROBINSON vs. CARMONA, 336 F. 2d 518.
24 Likewise, the personal property of the bankrupts passed to the Trustee,
25 Section 70a of the Bankruptcy Act, and the Orders with regard to the
26 settlement of the suit against FIRST FEDERAL SAVINGS & LOAN

1 ASSOCIATION OF SANTA MONICA and the sale of personal property
2 were procured in conjunction with the duties imposed by law on the
3 Trustee to collect and reduce to money the property of the estates for
4 which he is Trustee.

5 Section 47a of the Bankruptcy Act.

6 8. The Trustee filed his petition to sell certain personal
7 property on February 13, 1967, and same was sold to the highest bidder
8 in open court per order of April 27, 1967, and the Trustee filed his
9 application to compromise controversy with FIRST FEDERAL SAVINGS
10 & LOAN ASSOCIATION OF SANTA MONICA on March 21, 1967, and
11 same was confirmed by the Referee on April 21, 1967. In both instances
12 notice of the hearing was given to creditors as required by the Bank-
13 ruptcy Act and said Orders were confirmed after hearing. No creditors
14 opposed the entry of the Orders. The reviews were filed by the bank-
15 rupts.

16 9. It is quite clear that a review of a Referee's order
17 may be taken only by a "person aggrieved by the order".

18 Section 39(c) of the Bankruptcy Act,
19 11 U. S. C. 67(c).

20 10. The authority conferred by Section 39(c) of the
21 Bankruptcy Act to petition for review of a Referee's order is restricted
22 and is granted only to those who have immediate interests in the bank-
23 rupt estate as such and does not include those who would be indirectly
24 affected by the order.

25 ROGERS vs. BANK OF AMERICA NATIONAL
26 TRUST & SAVINGS ASSOCIATION, 142 F 2d
128, 129.

1 11. The bankrupts were not persons aggrieved by the
2 Orders (of April 21 and 27, 1967) of the Referee with regard to the
3 liquidation of the bankrupt estate.

4 HARTMAN CORPORATION OF AMERICA
5 vs. U. S., 304 F. 2d 429.

6 CASTANER vs. MORA, 216 F. 2d 189.

7 See also In re HENRY WOOD SONS CO.,
8 279 F. 60.

9 12. Even if the review herein was by a "person aggrieved"
10 there is no showing that the Orders of April 21 and 27, 1967, were not
11 proper or that the Referee was clearly erroneous in confirming said
12 sale and said compromise.

13 General Order in Bankruptcy No. 47.
14 ROGERS vs. GARDNER, 226 F. 2d 864.

15 ARGUMENT RE ORDER OF MAY 2, 1967

16 13. On March 8, 1967, the bankrupt filed a Petition for
17 Abandonment of Bankruptcy Petition and Proceeding. Subsequent there-
18 to, notice was given pursuant to Section 58 and 59(g) of the Bankruptcy
19 Act, and the matter was set for hearing for April 27, 1967. At said
20 hearing the bankrupt appeared in Pro Per, and the Trustee appeared by
21 and through his counsel, ROBINSON, WOLAS & HAGEN, and a creditor,
22 FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SANTA
23 MONICA, appeared by and through its counsel, ENRIGHT, ELLIOTT
24 & BETZ, Counsel for the Trustee on behalf of general creditors and
25 counsel for FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF
26 SANTA MONICA opposed the application to dismiss. As a result of
said hearing the Order of May 2, 1967, denying the application for dis-
missal of bankruptcy proceedings was made and entered, which Order

1 is now being reviewed by WILLA G. SKELTON.

2 14. The bankruptcy proceedings of WILLA G. SKELTON
3 were commenced as a voluntary petition under the Bankruptcy Act filed
4 on November 21, 1966. That since the filing of these bankruptcy pro-
5 ceedings a Trustee has been appointed and the estate has been adminis-
6 tered. During the course of the administration, two lawsuits have been
7 compromised pursuant to Order of Court, liens of various secured credi-
8 tors have been invalidated, and the Trustee in Bankruptcy has sold assets
9 to third party purchasers. A further review of the claims on file in the
10 bankruptcy proceedings of WILLA G. SKELTON will reveal that there
11 are approximately eleven (11) creditors who have filed proof of claim
12 and the total indebtedness due said eleven (11) creditors exceeds
13 \$39,000.00.

14 15. The Referee in Bankruptcy, having full knowledge of
15 all of the facts of this case, has exercised his discretion in determining
16 that it was in the best interests of creditors of this estate that these
17 bankruptcy proceedings not be dismissed. The power of the Court in
18 the exercise of judicial discretion, to dismiss a bankruptcy proceeding,
19 when the prescribed conditions have been complied with is clearly im-
20 plied but the Bankruptcy Act does not confer upon the bankrupt or any
21 other applicant an absolute right to have the proceedings dismissed.
22 Furthermore, the Order of the Referee will not be disturbed unless
23 said Order is clearly erroneous.

24 General Order in Bankruptcy No. 47.
25 ROGERS vs. GARDNER, Supra.

26 There is nothing in the record before this Court to indicate

1 that the Order of the Referee affirmed by the District Court is clearly
2 erroneous and quite to the contrary, it is in the best interests of credi-
3 tors of this bankrupt estate that said bankruptcy administration continue
4 and creditors, in fact, oppose the dismissal of said bankruptcy pro-
5 ceedings.

6 In re STRUNKS LANE (D. C. K. Y. 1946) 64 F. Sup. 731.

7 16. The law is well settled that there is no right by the
8 bankrupt to withdraw a voluntary petition in bankruptcy, after adjudica-
9 tion.

10 GOODRICH vs. ENGLAND (9th Cir. 1958) 262 F. 2d
11 298.

12 In re WEARE (D. C. N. Y. 1949) 87 F. Sup. 413.

13 17. There is nothing in the record which would indicate
14 that creditors or any other party in interest has consented or would
15 consent to the vacation of the adjudication. While there have been cases
16 where orders have been granted vacating adjudication, they have been
17 made upon the consent of all of the creditors and all parties who have
18 interests in the proceeding. It is the rule founded upon sound principles
19 that permission to vacate an adjudication in bankruptcy will not be
20 granted where it would result in either reducing or effecting the claim
of creditors in the bankruptcy.

21 In re WEARE (D. C. N. Y. 1949) 87 F. Sup. 413.

22 In re RIORDAN, 95 F. 2d 454.

23 18. In the event there would be a dismissal of these bank-
24 ruptcy proceedings, there is no assurance that the assets would be made
25 available for the payment of the creditors' claims. A review of the
26 bankruptcy schedules show that the bankrupt herein scheduled secured

1 creditors in the approximate amount of \$147,000.00 and general un-
2 secured creditors in the amount of \$51,593.00. The Petition to Dismiss
3 the bankruptcy proceedings was not accompanied by consents of credi-
4 tors, contained no offer for the settlement of the claims of creditors
5 and offered no assurance that the assets in the hands of the Trustee
6 would be made available for the payment of creditors' claims nor was
7 there any offer to pay the costs of the bankruptcy proceedings already
8 incurred.

9 TERSING vs. SHINBERG (C.C.D.C. 1944)
10 140 F. 2d 706.

11 CONCLUSION

12 19. For the foregoing reasons, the Orders of the Referee
13 of April 21 and 27, 1967, as confirmed by the District Court on July 6,
14 1967, and the Order of the Referee of May 2, 1967, as confirmed by the
15 District Court on October 5, 1967, should be affirmed.

16
17 Respectfully submitted,
18 ROBINSON, WOLAS & HAGEN

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20 By 
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22 HERBERT WOLAS
23 Attorneys for Appellee
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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

Ruth Miranda, being first duly sworn, says: That affiant is a citizen of the United States, a resident of the County of Los Angeles, California; over the age of eighteen years and not a party to the within action or proceeding; that affiant's business address is 408 South Spring Street, Los Angeles, California; that on May 10, 1968, affiant served the within Appellee's Opening Brief on the Appellants in said action by placing a true copy thereof in an envelope addressed to the parties listed below as follows: WILLA G. SKELTON and CHARLES W. SKELTON, 2444 W. 255 Street, Lomita, California, and then sealing said envelope and depositing same, with postage prepaid thereon, in the United States Post Office, at Los Angeles, California; that there is a regular communication by mail from said Post Office of deposit to the place so addressed. I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on June 3, 1968, at Los Angeles, California.

Ruth Miranda

Subscribed and sworn this 3rd day
of June, 1968.

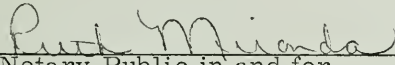
Notary Public in and for
said County and State.

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

3 I certify that in connection with this brief, I have
4 examined Rule 18, 19 and 39 of the United States Court of Appeals
5 for the Ninth Circuit, and that in my opinion the foregoing brief is in
6 full compliance with those rules.

7
8 
9 HERBERT WOLAS

10 Subscribed and sworn this 3rd day
11 of June, 1968.

12
13 
14 Notary Public in and for

15 said County and State.



